CIVIL WRIT JURISDICTION CASE No.6457 OF 1990

In the matter of an application under Articles 226 & 227 of the Constitution of India.

SHASHI KANT PANDEY----------(Appellant)

Versus

THE STATEOF BIHAR & ORS---------(Respondents)

For The Petitioner : Mr.Ganesh Prasad Singh,Sr. Advocate & Mr. Manoj Kumar, Advocate

For The Respondent : Mr. A. K. Sinha, Advocate

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A.K.Tripathi,J The present writ application was initially filed for quashing of order dated 15.7.1988 by virtue of which petitioner was dismissed from service. The order of dismissal was affirmed even in appeal. It is not in dispute that an enquiry was held vide a set of charges and based on the findings recorded by the enquiry officer against the petitioner the disciplinary authority in his wisdom decided to punish the petitioner by dismissal.

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This writ application came to be heard in admission matter itself and vide order dated 1.10.93 the writ application was allowed on the sole question that in view of the recent decision of the Hon'ble Supreme Court since a copy of the enquiry report was not furnished to the petitioner the order of dismissal was an invalid order. The Court in its wisdom decided to set aside the order of punishment with a direction that the petitioner will be permitted to join, will be given a copy of the

enquiry report and thereafter on the show cause by the petitioner the disciplinary authority may pass a fresh order.

The matter did not rest here. The order of the High Court dated 1.10.93 came to be challenged by the Bank by filing a SLP. Hon'ble Supreme Court vide its order dated 21st April, 1994 set aside the order and remitted the matter back to the High Court for fresh consideration in the background of the decision which had been rendered in the case of Managing Director, ECIL vrs. B. Karunakar reported in 1993 (6) Judgment Today SC 1 It is in this background therefore the writ application is being heard afresh.

Submission of learned Senior counsel appearing in this case is that non supply of the enquiry report by the respondent has a vital bearing upon the punishment order which has been passed by the disciplinary authority. If the petitioner had been given adequate opportunity he would have been in a position to prove his innocence in the matter. Based on the counter affidavit and the enquiry report which has been brought on record as annexure-A some submissions have also been made on the findings recorded by the enquiry officer. The basic charge which has been leveled against the petitioner was of temporary embezzlement because the money deposited by various customers from time to time were not duly credited either in their Accounts or in the records of the bank.

Contention of learned counsel however for the bank in the present case is that the matter stands remanded to this

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Court by Hon'ble Supreme Court on a very limited issue. The issue of non supply of a copy of enquiry report in terms of Article 311 (2) of the Constitution of India as amended by 42nd Amendment came to be considered for the first time in the case of Union of India & Ors, v. Mohd. Ramzan Khan reported [(1991) 1 SCC 588]. Hon'ble Supreme Court held that supply of enquiry report has to be read in a disciplinary matter as a of right of hearing and even though there was no constitutional provisions or rules providing for the same, opportunity of hearing and the rules of natural justice required so. The issue decided by Hon'ble Supreme Court in the case of Ramzan Khan (Supra) was considered in the case of Managing Director, ECIL vrs. B. Karunakar where the Court made certain distinction in the earlier decision. It held that the decision of Md. Ramzan would be prospective in nature, meaning thereby that only in such case after 20.11. 1990, an enquiry is held, furnishing of an enquiry report would be a must. In so far as the proceeding which has been held earlier to the said decision merely because the enquiry report was not furnished it would not be a ground for setting aside of punishment order. The Court will have to see the prejudice which could have been caused to the petitioner by virtue of not being served a copy of the enquiry report.

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In the present case the enquiry was held much earlier and the order of punishment came to be passed on 5.7.1988. In that view of the matter non-supply of a copy of enquiry report

will not be fatal to the order of punishment. The Court, therefore keeping in mind the decision of the Hon'ble Supreme Court rendered in the case of B. Karunakar (Supra) and order dated 21.4.1994 examined the matter. The Court finds that based on the chargesheet and the findings the petitioner has filed a very detailed show cause before the disciplinary authority as well as the appellate authority. He has given pointed explanation to the charges which were leveled against him and the findings recorded in this regard. It is itself a sufficient explanation that the petitioner knew about the actual charges and findings which have came to be recorded against him. Non supply of enquiry report therefore has not really prevented him for offering the explanation to the findings and the charges. Now if based on the explanation offered by the petitioner if the disciplinary authority as well as the appellate authority were not convinced and if in their wisdom decided to impose punishment of dismissal it cannot be said that the order of punishment suffers from vice of non-supply of the enquiry report.

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The Court also heard learned Senior counsel appearing for the petitioner on the question of quantum of punishment. It was his submission that the order of dismissal of the petitioner on the set of charges was very harsh despite the act of omission and commission committed by the petitioner. This matter was therefore examined by the Court from the point of proportionality also. Petitioner entered in bank service in 1979 and

within six to seven years of service he was suspended and chargesheet was issued against him. Petitioner was holding the post of clerk –cum-cashier and by virtue of the said post if allegation of temporary embezzlement is made then in the opinion of the Court it is a serious consequence for the bank. If the customers loose faith into the bank because of the conduct of a cashier of the bank then it is very difficult for the institution to survive with such a reputation.

The question of any other punishment could have been considered by the Court if the petitioner had rendered long period of service affecting his post retrial benefit but as is evident from the record petitioner had only served the bank for six years therefore the question of giving a direction to the respondents to pass any other punishment other than dismissal does not help the petitioner in any manner.

To sum the Court does not find any legal infirmity in the order of punishment which has been passed against the petitioner.

This writ application has no merit and it is dismissed accordingly. However, there will be not order as to cost.

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(Ajay Kumar Tripathi, J.)

PATNA HIGH COURT, PATNA
DATED THE 14TH AUGUST,2008
RPS. SR. SECRETARY
NAFR.